

REMARKS

This paper is in response to the Office Action mailed January 2, 2008. In the Action, the Examiner considered claims 1-3, 5-9, and 12, claims 4, 10, 11, and 13-32 having been withdrawn from consideration as directed to a non-elected invention.

With this amendment, claims 3 and 5-8 are amended. With this amendment, Applicants have cancelled claims 1 and 2 solely in an effort to advance prosecution, and without acquiescing to or agreeing with the outstanding rejections. The cancellation is, of course, without prejudice to, or disclaimer of, the subject matter recited therein. Applicants reserve the right to present such claims in one or more continuing applications.

Claims 3, 5-9, and 12 are pending and under consideration with this amendment.

Restriction Requirement and Claim Status

In Applicant's response to the Restriction Requirement, claims 1-4, 5-9, and 12 were elected. Further restriction requirement was made for the SEQ ID NOS. and applicants elected SEQ ID NO. 3. Claims 1-3, 5-9, and 12 were examined in the Office Action dated January 2, 2008. Claims 4, 10-11, and 13-32 were withdrawn as being directed to a non-elected invention.

Applicants are allowing the non-elected claims to remain pending, as they are subject to possible rejoinder.

Specification – New Matter

The Action objects to the amendments to the specification and the claims relating to “a C/A polymorphism at nucleotide 80 in the nucleotide sequence of exon 3 of the LT- α gene shown in SEQ ID No. 3” as being new matter not in the original specification. The Action bases the rejection on the amendment from “81” to “80” and does not consider it a typographical error. The Examiner further argues that a polymorphism at nucleotide 80 will not result in the claimed mutation of threonine to asparagine.

Upon review of the specification and sequence listing, Applicants agree with the Examiner's interpretation, but note that the confusion results from a typographical error in SEQ ID NO: 3 as originally filed. Thus, with this Amendment, Applicants submit a corrected Sequence Listing showing the correct SEQ ID NO: 3. By way of explanation, SEQ ID NO: 3 as listed in the specification contains an additional guanine nucleotide ("g") at the beginning of the sequence, which offsets the nucleotide numbering by one, resulting in the incorrect nucleotide numbering sequence. Applicants submit that support for the correct sequence is provided in NCBI Accession Nos. NC_000006 and NM_000595.

Applicants respectfully request the Examiner withdraw the objection.

Claim Rejections – 35 U.S.C. § 112, Second Paragraph

The Action rejects claims 1-3, 5-9, and 12 as being indefinite for failing to particularly point out and distinctly claim the subject matter. For example, the Action rejects claim 1 for not reciting a nexus or connection between the preamble and the process step detecting a gene polymorphism. In response, Applicants have amended the claims to recite that the presence of a polymorphism is indicative of the presence of an inflammatory disease. Applicants submit that the claims were sufficiently definite to ascertain their metes and bounds, but have amended the claims to advance prosecution. In addition, applicants have cancelled claims 1 and 2, also to advance prosecution and without agreeing with or acquiescing to the rejection. As such, Applicants submit that this rejection no longer applies to claims 1 and 2.

The remainder of this rejection regards the amendment of nucleotide "80" for "81." As discussed above, a corrected Sequence Listing is submitted herewith, supporting the polymorphism at nucleotide 80.

Applicants respectfully request the Examiner withdraw this rejection.

Claim Rejections – 35 U.S.C. § 112, First Paragraph – Written Description

The Action rejects claims 3, 7-9, and 12 as failing to comply with the written description requirement. To the extent that this rejection relates to the error in the sequence discussed above

in the “New Matter” section, Applicants note that a corrected Sequence Listing and related amendments are included herewith.

The Examiner further rejects claims 1-3, 5-9, and 12 for failing to comply with the written description requirement. The rejection centers around the language of certain claim elements and the Office asserts that the breadth of this claim language covers an essentially infinite number of possible choices. In response, and without agreeing with or acquiescing to the rejection, Applicants have amended the claims to recite that the method is performed in a human, and have further amended the claims by replacing “inflammatory disease” with “vascular inflammatory disease.” In addition, applicants have cancelled claims 1 and 2 to advance prosecution and without agreeing with or acquiescing to the rejection. As such, Applicants submit that this rejection no longer applies to claims 1 and 2.

Applicants respectfully request the Examiner withdraw this rejection.

Claim Rejections – 35 U.S.C. § 112, First Paragraph – Enablement

The Examiner rejects claims 1-3, 5-9, and 12, under 35 U.S.C. § 112, first paragraph, as allegedly failing to satisfy the enablement requirement. In response, and without agreeing with or acquiescing to the rejection, Applicants have amended the claims as noted above. In addition, applicants have cancelled claims 1 and 2, also to advance prosecution and without agreeing with or acquiescing to the rejection. As such, Applicants submit that this rejection no longer applies to claims 1 and 2.

Applicants respectfully request the Examiner withdraw this rejection.

Claim Rejections – 35 U.S.C. § 102(a)

The Examiner rejects claims 1-3, 5-9, and 12 as being anticipated by Ozaki *et al.* (Nature Genetics December 2002 Vol. 32 p. 650).

Applicants note that this publication is of the inventors’ own work. Thus, Applicants submit herewith an unexecuted Declaration under 37 C.F.R. § 1.132 explaining that they are the authors listed on the cited art, and those who are not inventors were working under the direction

of the present inventors. An executed Declaration under 37 C.F.R. § 1.132 will be submitted in the near future to supplement this response. In addition, applicants have cancelled claims 1 and 2 to advance prosecution and without agreeing with or acquiescing to the rejection. As such, Applicants submit that this rejection no longer applies to claims 1 and 2.

In view of the Declaration under 37 C.F.R. § 1.132, Applicants respectfully request the Examiner withdraw this rejection.

Claim Rejections – 35 U.S.C. § 102(b)

The Examiner rejects claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by Trabetti *et al.* (Journal Med Genet 1999 Vol. 36 p. 323). Applicants have cancelled claims 1 and 2 to advance prosecution and without agreeing with or acquiescing to the rejection. As such, Applicants submit that this rejection no longer applies to claims 1 and 2.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
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